IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 07/01/2003

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The Honourable Mr. Justice V.S. SIRPURKAR
and
The Honourable Mr. Justice F.M. IBRAHIM KALIFULLA

Writ Petition No.16754 of 2001

S. Shanmugam .. Petitioner
-Vs-

1. Tamil Nadu Administrative Tribunal,
rep. by its Registrar,
Addl.City Civil Court Buildings,
Chennai 600 104.
2. The District Revenue Officer,
Coimbatore.
3. The Revenue Divisional Officer,
Pollachi. .. Respondents

Writ Petition under Article 226 of The Constitution of India to issue
a writ of certified mandamus as stated therein.

For Petitioner : Mr.V.Ramasubramaniam

For Respondents : Mr.S.T.S.Murthy,
2 & 3 Spl.Govt.Pleader

:O R D E R

(Order of the Court was made by
V.S. SIRPURKAR, J.)

The writ petitioner herein challenged the order of the Tribunal whereby his Application in T.A. No.91 of 1999 has been dismissed. In that Application, the petitioner had claimed pension at the rate of Rs.1 75/- per month on the basis of G.O.Ms.No.828, Revenue Department, dated 23.8.1996 which provided that all those persons who had lost job as Village Headman and all those who were on the job on 14.11.1980 should be granted pension. We need not go into the whole history of the aforesaid G.O. Suffice it to say that if a Village Headman was on job on 14.11.1980 and lost the job because of the new scheme, then he became entitled to pension at the rate of Rs.175/- per month. The petitioner accordingly made a representation on 8.11.1996 and found that no reply was given thereto. He again submitted a second representation on 7.3.1998 and there was no response and therefore, O.A. No.186 8 of 1998 came to be filed. The Tribunal disposed of the said Original Application by order

dated 27.3.1998 with direction to the Department to consider the claim of the petitioner for pension as per rules. The Department by order dated 10.7.1998 negatived the claim of the petitioner against which the Application in T.A.No.91 of 1999 came to be filed before the Tribunal which in turn also negatived the claim of the petitioner by the impugned order. The Tribunal has taken the view that firstly, the application was hopelessly belated and the petitioner was guilty of laches, since he had for the first time claimed pension in the year 1996, when he was not on job right from 1980. According to the Tribunal, there was a delay of 16 years. The second ground on which the Tribunal proceeded is that the petitioner had abandoned his service inasmuch as after taking leave in April 1976, he never joined and as such, he could not be said to be on the job on 1 4.11.1980. The only question to be decided is as to whether the petitioner was on job on 14.11.1980.

2. Mr.Ramasubramaniam urges that the petitioner was on job as Village Headman till April 1976 when he proceeded on leave and thereafter, he sought for extension of leave but no order was passed on his application for extension of leave. He submitted another application on 8.8.1977. However, nothing has happened on that application. But, on 31.8.1978, a charge memo was issued against him for his absence. He gave his reply on 16.10.1978. He was directed to be present for an oral hearing on 19.3.1980 on which date the Department sought for some document regarding his properties which document came to be filed by him on 27.8.1980 and thereafter, nothing has happened either by way of termination or by way of reinstatement order. All that happened on 14.11.1980 is that the post itself got abolished. The learned counsel says that the writ petitioner's unblemished service with his department was never severed by way of termination order or otherwise and that therefore, he deemed to be in service on 14.11.1980.

3. The learned Government Pleader opposed this by saying that the petitioner had abandoned the service in April 1976 and thereafter, he never returned. The learned Government Pleader also supported the order of the Tribunal that the petition was hopelessly belated.

4. The order of the Tribunal, in so far as the question of laches is concerned, is obviously incorrect, because the petitioner had no reason to claim anything before the issuance of G.O.Ms.No.828 on 23.8.19 96. It is only on that date the petitioner became entitled to get pension at the rate of Rs.175/- per month. Therefore, the petitioner raised his claim for pension for the first time on 8.11.1996 for which he cannot be faulted. The said application dated 8.11.1996 was also acknowledged by the Government, but no reply was given to him and therefore, he was justified in approaching the Tribunal only in the year 1998. Therefore, there is no delay as observed by the Tribunal.

5. As regards the second ground, it is the admitted position that the petitioner was in government service. Therefore, unless the Government comes out with a specific case that his service was terminated or otherwise his connection with the department was severed, at least technically, he would be

deemed to continue in government service. No such order was shown to us. As if this is not sufficient, later in the year 1991, the petitioner was given the job of Panchayat Assistant on the basis that he had lost the job of Village Headman on 14.11 .1980. That would be a very relevant circumstance, which has not been considered by the Tribunal at all. Be that as it may, the clear cut position is that on 14.11.1980, the petitioner was undoubtedly on job, since he was not terminated from service and as such, he would be entitled to be covered under G.O.Ms.No.828 dated 23.8.1996 and he would be entitled to all the benefits thereupon. The order of the Tribunal is set aside and the T.A. is allowed and the writ petition is also allowed. The payment of the pension shall be made within three months from today. The rule is made absolute in the above terms, but without any order as to costs.

Index: Yes
Website: Yes
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To

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